

COMMISSIONERS APPROVAL

LUND *BJL*

THOMPSON *AT*

CHILCOTT *GC*

TAYLOR (Clerk & Recorder)

Date.....January 31, 2006

Members ..... Commissioner Greg Chilcott,  
Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Sally Fortino, Glenda Wiles

The Board met to discuss and consider the Walker/ Teman boundary line relocation, and escrow and filing issues. Present for this discussion were Karen Hughes, Planning Department; James McCubbin, Deputy County Attorney; Morgan Farrell, Environmental Health. Others present included Jake Kammerer, Kammerer Environmental Consulting; and Mr. and Mrs. Teman.

Karen said the boundary line relocation was preliminarily approved in September. Some work needs to be done by the adjoining property owner. The septic system was undersized. The Temans would like to get everything filed in a timely fashion.

Jake presented pictures and drawings to the Board of County Commissioners, and gave a brief explanation of them:

Joanne Walker owned an orchard tract, which had multiple mobile homes in front. She was told she was running an illegal trailer court and would have to apply for a subdivision, splitting the property into four pieces. She had a mobile home with a stick-built structure attached to it. The mobile home burned. She moved the other structure to a semi-permanent foundation and moved another mobile home along side it, but not attached to it. It has remained in that configuration since 2004. She didn't realize she was out of compliance with DEQ requirements. The number of people living there and the overall structure size has not changed. Ms. Walker is elderly and infirm. Family members live in the stick-built structure and are her caregivers.

An attempt to get permission for two dwellings on the lot met with failure. Options remaining are to get rid of the "ark", (Ms. Walker's name for the stick-built structure), get rid of the mobile home, or connect them. The logical solution is to connect the two structures. The easiest solution is to tie them together into one unifying structure. It has to be permanent, according to the Planning Department. Teman's concern is that their neighbor is a saver. They would prefer not to see Ms. Walker's 'collection' gravitate any further than it has. The boundary line relocation absorbs a 4-acre piece from Ms. Walker. The Temans propose the most likely solution is for them to buy the 4-acre piece, which will allow Ms. Walker \$15,000 in an escrow account, with Ravalli County as the recipient, as a surety bond that the work will be done. Jake has arranged for a contractor to check out the situation and an excavator to redo the septic system. The Temans would like to see the septic system replaced. Jake believes there are more bedrooms than were

approved for the present septic system. To get local approval, Environmental Health will sign off; Planning will sign off if the Board of County Commissioners agrees. The moneys not used for the structure reconnection and septic improvement will be released to Ms. Walker. The job should be completed in one week.

Karen said Planning would like to see the wastewater treatment system improved. She asked for a full set of plans for the proposed unified structure, to show how the mobile home and wood frame structure are to be connected and enclosed. The reunited structure needs a common roofline. What remains is a wastewater exemption form to be completed and approved.

Morgan said, from the standpoint of DEQ or Environmental Health, this as a replacement septic system to meet the requirements for the number of bedrooms. If it is secure that this will happen, it is secure with DEQ.

James, looking at the proposal, said an exemption couldn't be conditioned; there is no authority to enter into it. We can condition a septic system change.

We need to know actual costs of doing the work with construction plans or something. The \$15,000 may be more than what is needed, but we don't know. As a form of security it doesn't require anyone to overpay. A bond or Letter of Credit would be more likely. The language is vague. The fundamental question is would this thing, as proposed, be one improvement or building? Does it fall within subdivision exemptions?

Commissioner Chilcott said he doesn't remember a common foundation.

James said one foundation removes the question of the number of buildings. A common roofline does not necessarily make one building. In this case, the factual determination is to be made by the Board of County Commissioners.

James said two residences separate the people living in each. The solution can be done with an agreement between the Temans and Walkers. Do as a buy/sell agreement. The money would be from the sale price, conditioned on her using the money to do the work. It would be quicker than redrafting this; it could be a simpler solution. That would be dependent on knowing that the resultant structure would be acceptable to the County.

Jake said the mobile home is on a permanent mobile home foundation. The two cannot be placed on one single foundation because of the way they are in relation to one another. It would require pouring a single foundation and moving all structures to the new foundation. What the Planning Department is suggesting cannot be done. Planning is asking for more than they have a right to, since they were there prior to the new regulations. There is no easy way to get this done, no access from one to another.

Commissioner Chilcott said we must determine if we consider this a common structure. Would the Temans enter into a buy/sell agreement to fulfill the intent of this agreement?

Mr. Teman answered that they would.

Commissioner Chilcott asked if this could be considered a common structure. They were considering a poured concrete foundation and the need to move one building. Commissioner Lund said she agreed. Commissioner Thompson said there was no problem, in his estimation. He

added that he is a little distressed that they had discussed a mother-in-law facility in the past, but didn't discuss a common foundation. But as long as the number of bedrooms is in compliance with septic system regulations, he sees no problem.

James said, regarding the foundation issue, people have asked to put a walkway between two dwellings and make one structure. The entire insurance system considers covered walkways between two dwellings to still be two buildings.

Karen said she wanted to see that they are structurally connected in some way. Some sort of connection is expected. She would like to see how it is to be connected.

Jake said there is no way to do a common roofline here.

The Board agreed that it would be counted as one structure.

Commissioner Chilcott asked how they would confirm a buy/sell agreement. James said the buy/sell agreement could be amended, in terms of finding you are directing the Planning and Environmental Health Departments that there is no subdivision in need of review.

Karen said usually a review for Planning and Environmental Health is connected to a \$200 fee. Morgan said there is one waste water system, which has been upgraded.

James said this is an unusual situation.

Karen asked to have the record show that the review fee is waived.

James said if an agreement is reached with Ms. Walker about how this will be built, then they are eligible to continue with Morgan to get DEQ approval.

Commissioner Chilcott said this proposal was to assure us this would be done.

Morgan said escrow sounded like a good idea, to guarantee that the job would be done as stated.

James referenced the conditioning of boundary-line relocation, saying that it cannot be done.

Morgan said he would sign for the DEQ.

Jake said they are not trying to condition a boundary line; it is already set.

Commissioner Chilcott said someone putting a dollar figure before the Board of County Commissioners does not guarantee that said amount would cover the expenses of the job.

Commissioner Lund said two bids have been given.

James asked if they have a set bid on construction materials.

Jake said Ms. Walker wants to buy the materials herself.

Commissioner Chilcott said not knowing what construction fees will be, we have no leverage to get it done.

Mr. Teman said he could raise it to \$20,000 if necessary, in a bond or escrow account, 6 months, no interest-bearing account, with the County as recipient.

Jake said the septic system would be in now if it didn't need DEQ approval.

Commissioner Chilcott said we need a figure so we know taxpayers won't get stuck with the bill.

Jake said if the Board gives approval to the local reviewing authority, we have a commitment, so we have the ability to get there; we can make it happen. We are going to unify these to make one structure. If we can get DEQ approval, give us 30 days and it will be done.

Commissioner Chilcott said we need a verifiable number.

Jake said he could get a price list for materials from UBC today.

Commissioner Lund asked if these people are willing to go to \$20,000 for escrow.

James said you are taking Ravalli County into the agreement, though they are not signers on it.

Morgan said if this falls through, the situation remains out of conformity, with someone who cannot afford to do anything about it.

James said the issues are satisfied with the buildings joined; then it becomes DEQ's problem.

Jake started this work in September 2006.

Commissioner Chilcott suggested getting materials bids immediately.

Jake said the DEQ approval statement gives authority to make improvements, upgrades, and replacements. The County said they would not approve without a replacement system.

Morgan said he could not okay something that isn't okay.

James suggested that the meeting be continued to the afternoon. He added that he would recommend the Commissioners not agree to the proposal.

Commissioner Lund made a motion to continue the meeting to 1:15 p.m. in order to receive the building materials list and prices. Commissioner Thompson seconded the motion and all voted 'aye'.

In other business, the Board met to hear the appeal of a denial of a boundary line adjustment on property owned by Mark Tate. Mark indicated they purchased their property in 1993. They planned to build a new house and therefore applied for a lot line adjustment. They were turned down on their application and do not understand why this exemption was denied. Mark also presented a map of other properties in the neighborhood that have received lot line adjustment

from the Commissioners. Mark also relayed he intends on selling a ten-acre parcel because the lot lines that were established many years ago actually run through their current house. He visited with the neighbors and asked them if they had any objection to having his lot lines changed. Of the neighbors he spoke to, no one had any problems.

James stated two of the lots are very similar to the Judge Langton case, in regards to shifting a lot line to enable construction of another residence. Shifting the lot line enables a new residential lot. However, if this were an aggregation into two lots, it would not be an issue. Shifting the westernmost lot would not create a new lot.

A member of the Tate Family noted the house that was constructed should not have been built where it was. There was some discussion of the location of the driveway. The pictures do not reflect the correct lines that are within the aerial photos. James stated this is a factual consideration if this would create another lot.

Karen Hughes stated Nedra Taylor would like to review these additional facts. Commissioner Chilcott noted there are three build-able lots; by changing the lot lines there are still three build-able lots.

Another member of the Tate family noted there are 56 acres, and if this were denied, she would not be able to change the boundaries to her 60 acres. Her lots are long and someday the deed would need to be changed to accommodate her sprinkler system.

Commissioner Chilcott stated they should review these boundary line requests in regard to Judge Langton's recent court decision. He stated it does not appear the number of lots will be changing. Karen stated Nedra should review the pictures, which obviously change the facts surrounding this application.

Mark also noted he could not reduce his lots to anything less than 10 acres. Commissioner Thompson stated he did not see any problem with this lot line adjustment, but it is Nedra's final determination.

In other business the Board met with Soozie Knapp in regard to a family transfer application. She stated they looked at these 12.62 acres in March 2004. It was represented as two lots, with separate addresses and two wells, etc. The realtor said they could split off a few acres, allowing her parents to take the larger portion. She visited with Planning; they stated a family transfer could be done. They purchased the property and when she visited with Karen Hughes, Karen advised her that a family transfer could not be done because it is within a subdivision. She visited with Dennis Applebury and he felt since it was recorded in 1910 it is exempt from this denial. She then talked to Nan in Planning, who advised her she could do a family transfer. They then paid their fees, submitted the application and were denied. This is a conveyance prior to 1974, and the rules do not apply. Planning then advised her that the Clerk & Recorder attended a conference in October and they now deem it to be denied. She asked if it was a timing issue. If they had known this, they would not have purchased this property. Soozie stated they are not attempting to evade any regulations; they simply want to split off the 2 acres for her and her husband, and her parents will live on the remaining 10 acres.

Karen stated Soozi has been caught in a flip-flop situation in regard to a platted subdivision within the Platting Act in 1973. She stated the County Attorney's office is trying to come to a decision, which hasn't happened yet.

Commissioner Chilcott commented on a gift or sale to a family member in a similar situation. James stated the purpose cannot be to evade the Platting Act, and this does not sound like that is happening here. It has to be outside the platted subdivision and given to an immediate family member. Therefore the element is if the land is outside the legally platted subdivision. That is where Soozi is being hung up because George Corn has not reached an opinion. In 2004, he presented a memo showing that those orchard tracts could be exempted prior to the 1973 decision, but the County Attorney is uncomfortable with that opinion. So for some time, George and Karen have been reviewing this. Since that review they have stopped allowing the exemptions. James stated he does not know that George was working on this issue last night.

Linda Biesel stated this piece is on an amended plat. Soozi stated Nan also addressed this with her, but it was noted this Amended Plat was in 1995 and it did not create any build-able lots.

Commissioner Lund agreed that Soozi is caught between two opinions, but the Clerk & Recorder never allowed the exemption (family transfers) because of the law. In the early 1900's there had to be some subdivision law that created these platted subdivisions. James stated there is no question that the term 'subdivision' existed prior to the Subdivision and Platting Act of 1973. But what determined and defined the subdivision? The research includes attempting to find that law. James stated there is not a clear answer; otherwise, George would have had an opinion by now. Karen stated from the date this application was received it would be her guess that this was verbally approved. She would also visit with Nan and gather some facts of what Soozi was told. Commissioner Lund stated if the Planning Staff stated to Soozi that this could be done, they should honor this. James stated we must confirm this with Nan and the other staff members.

Linda stated last week a citizen advised the Clerk & Records' Office that Planning had advised them they could do a family transfer within a subdivision. So, how far do they go with these approvals? The two they have allowed, have been by directive from the County Attorney's Office. James stated for any applications that are submitted on lots within a subdivision after the 1973 Subdivision and Platting Act, they cannot allow this.

Commissioner Thompson stated the law is muddled enough and he has suggested the legislators change the law. He stated they should err on the side of the family who is trying to keep their family intact. There are some people who attempt to evade the application process, but it does not sound so in this case. He stated he would like to move through this and allow this family to utilize this family transfer. Commissioner Lund concurred. James stated if the finding is that there is a positive fact to show this representation was made to Soozi, they should follow what is represented to these people.

Soozi's parents, the Gallaghers, said they would not have purchased the property had the Planning Staff not advised Soozi that they would be eligible for this exemption. Mrs. Gallagher also noted Larry Lund, the Real Estate agent, indicated this was two separate addresses, two separate wells, etc. Soozi stated she is aware that what is advertised in the market is not what actually occurs. She stated that is why she met with Planning.



Commissioner Chilcott stated this is up to the Clerk & Recorder. James said if you make the finding based on the verbal communication, approve this. Otherwise wait for George.

Commissioner Chilcott stated Soozi did work in the Department of Revenue, which gives her credibility because she worked with them on a daily basis. He would like to see some independent verification, and Karen will visit with Nan to see if she recalls this conversation with Soozi.

Commissioner Lund left the room because Larry Lund's name was mentioned. Commissioner Chilcott stated under Montana Code, the door was to be closed for legal strategy, due to the pending litigation with the Lund name.

Door now open: Glenda confirmed that Soozi was up to visit with Planning, no one was around; she was waiting for Patrick, the conversation was positive and they went into the Planning office. Soozi stated she could not recollect that particular conversation, but knows she did visit with Patrick at some time.

Commissioner Thompson stated the findings support the information given to them by Soozi. Commissioner Chilcott stated the finding is that the County did make a representation that this could be done and the property was purchased based on that conversation. The Board of County Commissioners, therefore, makes the recommendation that this transfer can be done. James said regardless of the opinion by George, he believes this transfer should be approved. Commissioner Lund abstained from this discussion.

Nedra will be given this information and get back to Soozi.

In other business the Board met to open and award the bids for the Unicom-Based weather station at the airport. Two bids were received, as follows:

- Potomoc Aviation (bond addressed: saving \$3,375.00 if not necessary to purchase the bond) Unit and bonding \$71,375.00. Operation and Maintenance manual was included, along with installation diagrams, etc.
- Bellfort Instrument Co. \$47,096.28 Maintenance manual, etc., was included.

Commissioner Lund made a motion to give the bids to the Airport Board for their review and recommendation to the Board of County Commissioners. Commissioner Thompson seconded the motion and all voted "aye".

The Board met to continue their previous meeting on the award of the water/sewer project on Old Corvallis Road. Present at this meeting was Fair Manager Gary Wiley and Les Linnendoll. Gary stated he reviewed the references provided by Grenfell Trucking, which was the lowest bid on the project received. The reference was complimentary on the work provided by Grenfell Trucking. Commissioner Thompson made a motion to award the contract to Grenfell Trucking for the work for the water and sewer project on Old Corvallis Road. Commissioner Lund seconded the motion and all voted "aye".

Gary also referred to the irrevocable letter of credit or bid bond be presented for this job. Gary will have Grenfell Trucking contact the General Contractor for the Event Pavilion Center for any coordination of work that needs to be done.

In other business, Jake Kammerer returned with the costs for the Walker-Teman project from this morning's meeting. He felt \$15,000.00 would cover the building costs quite easily. The Commissioners agreed.

In other business, the Board met with Karen Hughes to discuss zoning options. Karen stated zoning is used for:

Protection of public health and safety, public welfare through density, land uses themselves or special uses and design (which include signage, landscape or simple design). Densities can be done in districts or Countywide. The zoning can also be done in regards to residential, commercial, etc., and the design thereof. There are lots of examples throughout the nation and it could be simple or with layers. State law allows voluntary zoning districts (done by citizen petition and enforcement (no more than 50% of property owners can protest), County-initiated zoning done by resolution (can be for special circumstance or piece, not necessarily the whole County). An example of the County-initiated zoning is the zoning areas established by the County around the city limits. When the resolution is in place, other areas can establish their districts, also. This does not require a petition process, but if 40% of the property owners, or 50% of land mass protest they can stop the district. This is more stringent than voluntary zoning districts. If the district is shot down, then they have to wait a year. A Board of Adjustment needs to be set up for administrative decisions and appeals. There would need to be a zoning officer, also. The County does enforcement for this type of zoning. Appointment of enforcement officers can also occur. Under a zoning resolution the Board of County Commissioners would try to set some sort of uniformity in place so each district is not different. Lastly, there is interim zoning (emergency zoning), when there is a major public health and safety issue in a neighborhood. There is a one-year time limit with possibility of extension, but you can only address the problem at hand.

Try to deal with compatibility and implementation of land-use policy; allow permits to deal with the costs. It can also be inclusionary: i.e., costs can exceed the homeowners' ability, can be bureaucracy and over-detailed. So you want zoning to be as simple as you can make it. It needs to be based on good planning, and based on good public policy.

Commissioner Chilcott asked Karen about density mapping. Karen stated Lake County implemented a density-mapping project. Sue Shannon, from Lake County, will be in Missoula in February and Karen will visit with her and ask her to come here. Karen stated density and land use could be blended together. Commissioner Chilcott stated he likes the County-initiated zoning, allowing the neighborhood to include what is important to their property rights. Commissioner Chilcott also noted the transferable development rights are costly, and although Gallatin County utilizes this, they might be too costly to utilize here. Karen addressed an example of zoning within a specific location, that being Area 3, which is the Neighborhood Plan that John Horowich has worked on. Regulations can be put into place for that area; then other neighborhoods can be added. She also noted that the resolution can include the regulations or the regulations can follow the resolution. The resolution sets up the basic framework, giving authorization, definitions, enforcement, Board of Adjustment etc.; the regulations can be adopted under the resolution. Or the resolution could include the regulations addressing the density, land use, etc. State law allows you to go either way. Senate Bill #116 allows some expediting of subdivision review if a zoning resolution is in place, but this is a new law and she would need to review this.

Commissioner Thompson asked if the initiated zoning district becomes more stringent than voluntary zoning districts. Karen stated she would need to visit with James. In regard to



covenants, if the County is not a party to them, the County can impose zoning on top of land with covenants. They could be in conflict, and the County would not want to do that. This would be a difficult issue to address.

Commissioner Thompson stated he is uncomfortable telling residents what they can do after they have already purchased their property. Also the GP was based on seven different school district areas, allowing the residents to come up with what they want. Sula is different from Florence. But he agrees they need to look at zoning in order to 'begin' to zone. Those issues include setbacks on the river along with the floodplain regulations, and contentious issues, such as racetracks. They need to look at gravel pits unless this is regulated by the State. He stated he is not ready to take the first step in regard to density. If there is enough consensus maybe they can address density. He is more interested in voluntary zoning districts.

Commissioner Chilcott said what currently limits development is infrastructure. If Lake County has figured out the needs and what they have, then to build upon that, a density zone would change and migrate to that area. Commissioner Chilcott stated there is some science that needs to be utilized, such as the aquifer study, etc. But streamside setbacks do have the science available. He is against any arbitrary decision, as it needs to be based on science.

Commissioner Lund suggested they contact Bitterroot Water Forum and have them weigh in on the streamside setbacks.

Karen stated in regard to gravel mining, State law addresses this and allows some local County control when areas are zoned residential. Karen also addressed the major difference in petition zoning and County-initiated zoning. Petition zoning needs a minimum of 40 acres. No spot zoning can be done.

Tim Tiplady was present. He is a resident of the Three Mile Area. He appreciates this zoning is to be used as a tool for growth and development.

Scott McCarthy stated he lives in the same area and agrees with Tim.

Commissioner Chilcott felt this can be a long and contentious process and encourages the citizens to become involved at the beginning.

Kathleen Driscoll stated it is time to do this. 'Everything says we need to do this'. Do this quicker than what you want to. The University of Montana looked at red-flag zoning, leaving those till the end of the process.

Carolyn Wisebecker asked about the voluntary guidance versus County-initiated zoning. She stated she is in favor of County-initiated zoning, rather than voluntary zoning districts. She likes the regulations, not just the guidance.

Karen stated she could address more zoning issues during her planning update at the end of February. She stated she would like to see various issues addressed each time they meet. Commissioner Chilcott stated he would like to meet with Paddy Trusler and Sue Shannon by the end of February. Commissioner Chilcott stated he does not want to reinvent the wheel. Karen

will also work with the group that is dealing with the setbacks, which includes the Bitterroot Water Forum.

Commissioner Thompson stated his concern also addresses the property rights. He does not want any one's property values to be diminished, understanding a balance is required.

Scott asked the Commissioners to treat the areas around the Lee Metcalf and Teller Wildlife with special consideration.

Tim stated he belongs to the Lone Rock Citizens for Growth, and while agriculture does not pay for services, the subdivisions are not paying for the services, either.

A discussion of Transfer of Development Rights or Purchase of Development Rights took place, plus a review of the various options available to the County along with other Counties, such as Gallatin County.